

accordingly enjoined enforcement of the statute.³

The only case discussed by the court below as support for its invalidation of the statute was *Commonwealth v Stone*, 191 Pa Super 117, 155 A2d 453 (1959), in which the Superior Court of Pennsylvania struck down a statute almost identical to the Kansas act involved here. In *Stone* the Pennsylvania court held that the State could regulate, but could not prohibit, a "legitimate" business. Finding debt adjusting, called "budget planning" in the Pennsylvania statute, not to be "against the public interest" and concluding that it could "see no justification for such interference" with this business, the Pennsylvania court ruled that State's statute to be unconstitutional. In doing so, the Pennsylvania court relied heavily on *Adams v Tanner*, 244 US 590, 61 L ed 1336, 37 S Ct 662, LRA1917F 1163 (1917), which held that the Due Process Clause forbids a State to prohibit a business which is "useful" and not "inherently immoral or dangerous to public welfare."

Both the District Court in the present case and the Pennsylvania court in *Stone* adopted the philosophy of *Adams v Tanner*, and cases like it, that it is the province of courts to draw on their own views as

*[372 US 729]

to the morality, *legitimacy, and usefulness of a particular business in order to decide whether a statute bears too heavily upon that business and by so doing violates

Headnote 2 due process. Under the system of government created by our Constitution, it is up

to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy. In this manner the Due Process Clause was used, for example, to nullify laws prescribing maximum hours for work in bakeries, *Lochner v New York*, 198 US 45, 49 L ed 937, 25 S Ct 539 (1905), outlawing "yellow dog" contracts, *Coppage v Kansas*, 236 US 1, 59 L ed 441, 35 S Ct 240, LRA1915C 960 (1915), setting minimum wages for women, *Adkins v Children's Hospital*, 261 US 525, 67 L ed 785, 43 S Ct 394, 24 ALR 1238 (1923), and fixing the weight of loaves of bread, *Jay Burns Baking Co. v Bryan*, 264 US 504, 68 L ed 813, 44 S Ct 412, 32 ALR 661 (1924). This intrusion by the judiciary into the realm of legislative value judgments was strongly objected to at the time, particularly by Mr. Justice Holmes and Mr. Justice Brandeis. Dissenting from the Court's invalidating a state statute which regulated the resale price of theatre and other tickets, Mr. Justice Holmes said, "I think the proper course is to recognize that a state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain."⁴

3. *Skrupa v Sanborn*, 210 F Supp 200 (DC D Kan 1961).

4. *Tyson & Bro. — United Theatre Ticket Officers v Banton*, 273 US 418, 445, 446, 71 L ed 718, 729, 47 S Ct 426, 58 ALR 1236 (1927) (dissenting opinion).

Mr. Justice Brandeis joined in this dissent, and Mr. Justice Stone dissented in an opinion joined by Mr. Justice Holmes and Mr. Justice Brandeis. Mr. Justice Sanford dissented separately.